

**RIO DELL CITY COUNCIL
SPECIAL MEETING
JANUARY 27, 2009
MINUTES**

A Special Meeting of the Rio Dell City Council was called to order at 9:05 A.M. by Mayor Woodall.

ROLL CALL: Present: Mayor Woodall, Councilmembers Barsanti, Dunker, Marks and Thompson

Others Present: City Manager Flemming, Chief of Police Hill, Finance Director Beauchaine, Acting Director of Public Works Jensen, City Attorney Martinek and City Clerk Dunham

SPECIAL MEETING MATTERS

A Resolution to Clarify the Procedures in the Whistleblower Policy for Reporting and Investigating Complaints

City Manager Flemming stated staff had provided Council with an overview of concerns in regard to implementation of the City's Whistleblower Policy. Presented to Council were proposed amendments to the City's Whistleblower Policy (Resolution No. 1028-2009) which she said would clarify the procedures for reporting and investigating complaints and also corrects some minor grammatical errors.

In addition, Finance Director Beauchaine provided an e-mail from Justin Williams, the City's auditor regarding similar concerns and making sure the policy provides protection for council and staff.

City Attorney Martinek reminded the City that the policy was enacted from the basis of a very strong recommendation from the auditor and at the time it was felt that the resolution could be revisited and revised if desired which is simply what the Council is doing now. He said the Council has total discretion to amend it anyway they want or leave it as approved.

Beauchaine clarified the e-mail from the auditor stating that she had asked him to outline the key points he would like to see remain in the policy if amended.

Mayor Woodall asked Attorney Martinek if he had reviewed Resolution 1028-2009 prior to its approval; Martinek said he had attempted to get together with Finance Director Beauchaine to review it prior to the meeting but there were problems with their schedules so was not able to review the resolution until the night of the council meeting when it was adopted.

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Councilmember Thompson asked the attorney if there was anything in Resolution 1028-2009 that is in conflict with city policies or procedures; Attorney Martinek sent on to explain the difference in a whistleblower policy and a grievance procedure stating that a grievance is oriented to the person him or herself whereas a whistleblower policy sets procedures for reporting and investigating improper governmental actions or wrongdoing.

Councilmember Marks pointed out that the whistleblower policy applies to anyone, not just employees so citizens can also submit complaints to the City under this policy.

City Manager Flemming stated her goal was to strengthen the policy by encouraging the council to approve the amendments, not to take away from the policy.

Councilmember Thompson felt the amendments would not strengthen the policy.

Councilmember Dunker said he disagreed and felt the council should consider all of the recommendations from a professional point of view and felt it would behoove the City to make some changes to the policy.

Finance Director Beauchaine pointed out a discrepancy in Item #3 from the auditor stating that employees need to go to a place they feel safe when filing a complaint and not make it a straight line in the event the complaint involves a department head or city manager. This amendment would remove the City Council as one of the places a complaint could be taken.

City Manager Flemming stated the reason for that is to preserve the council's neutral position during pre-investigation of a complaint. This would make them judge and jury and compromise their authority.

Finance Director Beauchaine pointed out the separation between the whistleblower policy and grievance procedure.

City Attorney Martinek noted that complaints against the City Manager would go to the City Council since the City Manager obviously can't investigate his/her own complaint.

Councilmember Dunker said as far as the city council being removed from any pre-investigation, the less exposure there is to potential Brown Act violations.

Finance Director Beauchaine stated from an internal control perspective, the auditors agree the City Council needs to be available to address potential complaints under whistleblower policy.

City Manager Flemming stated the auditors have made recommendations and the City has forwarded those recommendations to the attorneys and they in turn have made recommendations to protect the integrity of the City Council.

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Attorney Martinek suggested that Resolution No. 1028-2009 Section A be amended to add to say "allegations filed against the City Manager shall be forwarded to the City Council *and the City Attorney.*"

Councilmember Marks said she would not want to loose the avenue that allows employees the right to go to the City Council with complaints or concerns.

Councilmember Thompson stated that transparency is also very important and he was 100% satisfied with the Whistleblower Policy as approved by the City Council at the January 6, 2009 meeting.

Mayor Woodall said it was hard for the council to come into a meeting and receive information at the last minute without adequate time to review the material.

City Manager Flemming suggested the Council take time to read the material and forward any comments or suggestions to the attorneys before taking action on the proposed amendments.

Attorney Martinek pointed out that the law firm reviewing this policy specializes in the Brown Act and are experts in the area of employment law and suggested comments be directed to them.

A teleconference was scheduled for Thursday, January 29, 2009 at 9:00 A.M. with the law firm during a special council meeting to further clarify the procedures in the Whistleblower Policy.

Chief Hill commented that he was uncomfortable with the section of the policy that says the Human Resources department will maintain complete documentation of all complaints within the City and produce an annual report for the City Council; Finance Director Beauchaine said it would be more appropriate for the "City Manager" maintain the documents.

Councilmember Barsanti said he agreed with Councilmember Dunker as to when the Council should get involved but felt very strongly about the whistleblower policy and wanted to insure that staff is comfortable filing complaints and assured that they will be taken seriously.

Councilmember Marks asked if the policy "as is" is illegal in any way; Attorney Martinek responded by stating "no."

Discussion continued regarding how to proceed. Councilmember Marks said her goal is to protect staff.

Councilmember Dunker agreed with that comment but didn't feel the council was in a neutral place in regard to the policy.

Attorney Martinek noted that the City Council can be in a neutral place but should be reminded that the City Council manages the City Manager and if they don't like what she does, they can address it. He also said the Council needs to establish parameters and be as transparent as possible "within the law." He said the more the council injects themselves into particular issues, the more difficult it becomes to remain neutral.

Finance Director Beauchaine asked why the third paragraph under Section C *Informal Resolution of Complaints* was stricken in regard to disciplinary action; City Manager Flemming agreed it should remain in the document but said she would like to review it with the attorneys.

Councilmember Dunker stated that when a complaint is initiated through the whistleblower policy it is deemed as an allegation at that point and only becomes a valid complaint after investigation; Chief Hill said "inquiry" may be a better word to use during the pre-investigation.

Council was instructed to review the comments from both the attorneys and the auditor and put any comments or concerns in writing.

ADJOURNMENT

There being no further business to discuss, the meeting adjourned at 10:10 A.M. to the January 29, 2009 special meeting.

Attest:

Julie Woodall, Mayor

Karen Dunham, City Clerk